**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL APPLICATION NO.3295 OF 2006**

Walchand & Co. Pvt. Ltd. ...Applicant

vs.

Prabhudas B. Salla & others ...Respondents

Mr.B.A.D'lima i/b M/s.D'lima & Associates for the Applicant
Ms Rohini M. Dandekar i/b M/s.Berarwalla & Co. for
Respondent Nos.1 to 3
Mr.Rajesh More, A.P.P. for State

**CORAM: A.S.OKA,J.**
**DATE : OCTOBER 5,2006.**

**P.C.:**

1. Heard Mr.D'lima appearing for the Applicant. The Applicant in this Application is the complainant in a complaint filed under section 138 of the Negotiable Instruments Act, 1881. A Revision Application has been filed by some of the accused persons in the Sessions Court for challenging the order passed by the learned Magistrate on 29th January 2005. There is a delay in filing the Revision Application. An application for condonation of delay has been filed in the said Revision Application St.No.5580 of 2005. The Application for condonation of delay has been numbered as Misc. Application No.1035 of 2005.

2. An application for transfer of the said application for condonation of delay was made by the Applicant before the Sessions Court. By Judgment and Order dated 14th August 2006, the said application for transfer has been rejected by the learned Principal Judge. This is an application made under

section 407 of the Code of Criminal Procedure, 1973 for transfer of the said application for condonation of delay. By order dated 15th September 2006, this Court called for the report of the learned Additional Sessions Judge before whom the application for condonation of delay is pending. Today, the report has been submitted in a sealed envelope. I have perused the said report.

3. The learned Counsel for the Applicant relied upon the averments made in paragraph 11 of this Application. The grievances of the Applicant as narrated in the said paragraph can be summarised as under :

a) When the Applicant filed a reply to the application for condonation of delay, the learned Additional Sessions Judge handed over a copy of order dated 3rd April 2006 passed in Revision Application no.1212 of 2005 to the Advocate for the Applicant and informed the Advocate for the Applicant to file a pursis recording the acceptance of the said order.

b) When the Advocate for the Applicant raised an objection on the ground that the Revision Application itself is not maintainable by pointing out certain decisions of this Court and Apex Court, the learned Additional Sessions Judge made uncalled for and disparaging remarks against the Hon’ble Judges of the Apex Court as

well as the Judges of this Court.

c) The learned Judge expressed views which are contrary to the express provisions of law.

d) On the next date, once again the learned Additional Sessions Judge insisted on Applicant filing a pursis as stated aforesaid.

4. As stated earlier, I have perused the report submitted by the learned Additional Sessions Judge. He has disputed the correctness of the allegations made in this Application. Moreover, he has stated in the report that a compilation of several decisions have been placed before him by the learned Advocate for the Applicant.

5. The application for transfer made by the Applicant on same ground has been rejected by the learned Sessions Judge. It is true that the allegations made in this Application are of very serious nature. However, after perusing the report of the learned Judge, I find that no case is made out for passing order of transfer.

6. At the same time, it must be noted that the learned Judge will have to consider the contention raised by the Advocate for the Applicant that the delay in filing the Revision Application cannot be condoned as the Revision Application

itself is not maintainable. The learned Judge will have to hear and decide the application for condonation of delay on its own merits. The learned Judge will have to consider the submissions made by the Advocate for the Applicant for contending that there is no sufficient cause for condonation of delay. He will also have to consider the submission made by the Applicant that the delay cannot be condoned as the Revision Application itself is not maintainable. It is obvious that the learned Judge cannot ignore the Judgments of this Court and Apex Court which are binding precedents.

7. I am sure that the learned Judge will consider all the submissions made on behalf of the Applicant and will decide the Application for condonation of delay in accordance with law.

8. Hence, I pass the following order :

i) Prayer for transfer is not granted.

ii) The learned Additional Sessions Judge will hear and decide the Misc. Application No.1035 of 2005 in accordance with law. The learned Judge is bound to consider the objections raised by the applicant herein to the said application for condonation of delay.

iii) The parties are directed to appear before the learned Additional Sessions Judge on 11th October 2006 at 11.00 a.m. The learned Judge will endeavour to decide the said application for condonation of delay in accordance with the observations made in this order as expeditiously as possible and preferably on or before 24th November 2006.

iv) The report submitted by the Additional Sessions Judge be kept in a sealed envelope in the record of this Application.

**JUDGE**